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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	NO. CR 18-0352 PJH
)	
Plaintiff,)	UNITED STATES' SENTENCING
)	MEMORANDUM
v.)	
)	DATE: November 21, 2018
KAYBAUN RODGERS,)	TIME: 11:00 a.m.
)	
Defendant.)	Hon. Phyllis J. Hamilton

INTRODUCTION

The government respectfully submits this sentencing memorandum concerning the defendant, Kaybaun Rodgers. On September 5, 2018, pursuant to a plea agreement, defendant pleaded guilty to Count One of the Information in *United States v. Rodgers*, Case No. 18-0352 PJH, which charges defendant with sex trafficking of a minor, in violation of 18 U.S.C. §§ 1591(a)(1), (a)(2), (b)(2). In the Rule 11(c)(1)(C) plea agreement, the parties agreed to a Total Offense Level of 31, and further agreed that a reasonable and appropriate sentence in this case under the U.S. Sentencing Guidelines and 18 U.S.C. § 3553(a) is a 121-month term of imprisonment to be followed by a 20-year term of supervised release. The parties reached no agreement as to defendant's Criminal History Category.

On November 8, 2018, the parties received the U.S. Probation Office's Presentence Report (PSR) in this case. According to the PSR, defendant has a criminal history score of four, which places him in Criminal History Category III. The PSR also calculated a Total Offense Level of 31, resulting in a guideline sentencing range of 135-168 months. The Probation Officer nevertheless concurred with the parties' agreed-upon sentence, recommending a 121-month term of imprisonment, to be followed by 20 years of supervised release.

The government therefore respectfully requests that the Court follow the plea agreement and the Probation Officer's recommendation and impose a sentence of 121-months imprisonment, a 20-year term of supervised release, and a special assessment of \$100.¹

FACTUAL AND PROCEDURAL BACKGROUND

I. Defendant's Conduct

Pursuant to the plea agreement in this case, defendant admitted the following facts when he pleaded guilty on September 5, 2018:

From on or about August 28, 2016, to on or about February 19, 2017, defendant used an interactive computer service to post on the internet at least 46 advertisements on the website Backpage.com that depicted and described Minor Victim One and advertised her to engage in various commercial sex acts, to include oral and vaginal sex, in exchange for payment. At the time that defendant advertised Minor Victim One for commercial sex acts, defendant knew that she had not yet obtained the age of 18 years. For example, one advertisement on October 23, 2017, read, "Oakland/East Bay Women Seeking Men" (Post ID:73345813), and was titled, "Blonde Babe Big Booty Pawg – 19." The listed location of the advertisement was "East Bay," "Jacklondon," and "Richmond." The advertisement contained additional text, which read, "Hey fellas the One and Only Vanilla Cakez is back. If you met me then you know how good my desserts are and baby ill treat you better than she ever could . . . [listed phone number] ALWAYS real never fake." There were five photographs associated with this advertisement,

¹ The government concurs with the Probation Officer that defendant is indigent and does not have the ability to pay the \$5,000 mandatory JVT A special assessment.

1 all of which depicted Minor Victim One.

2 On October 24, 2017, defendant went to a hotel room where Minor Victim One and a
3 male, who had solicited a commercial sex act through the Backpage advertisement for Minor
4 Victim 1, were located. Defendant proceeded to video record Minor Victim One and the male.
5 In the recording, defendant confirmed with Minor Victim One that she had received \$120 for the
6 commercial sex act. Defendant also asked the male whether he knew he was there with a minor
7 and threatened to post the video to Facebook in an effort to extort additional money from the
8 male.

9 From on or about August 28, 2016, to on or about April 20, 2018, defendant also
10 collected from Minor Victim One proceeds of commercial sex acts in which Minor Victim One
11 participated. For example, on April 20, 2018, defendant instructed Minor Victim One to send
12 him \$50 via Western Union after she had received \$200 in exchange for a commercial sex act on
13 or about April 18, 2018.

14 On or about October 21, 2017, defendant used Minor Victim One to produce visual
15 depictions of sexually explicit conduct as defined in 18 U.S.C. § 2256. Specifically, defendant
16 used his cellular telephone to record two videos depicting Minor Victim One orally copulating
17 his penis.

18 Plea Agreement ¶ 2.

19 In addition to the above conduct, the PSR describes the events that initiated the investigation into
20 defendant. On November 3, 2017, an undercover Union City Police Department Officer responded to an
21 advertisement that described relations with another person. (PSR ¶ 6.) In text messages with the listed
22 number, the undercover officer discussed the price for potential sex acts and set up a meet at a local
23 hotel. (PSR ¶ 7.) Union City Police officers conducted surveillance of the hotel parking lot where the
24 adult victim was dropped off, and discovered defendant waiting in the only car located in the lot. (PSR
25 ¶¶ 7-9.) After searching the car, Union City Police Department found evidence on defendant's
26 cellphone showing he was trafficking multiple other victims. (PSR ¶ 11.)

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II. Defendant's Criminal History

The government agrees with the computation of the criminal history category set forth in the PSR. (*See* PSR ¶¶ 48-51.)

ARGUMENT

To determine the proper sentence, the Court must consider the factors and directives set forth in 18 U.S.C. § 3553(a). *See United States v. Booker*, 543 U.S. 220, 261 (2005). Those factors include the nature and circumstances of the offense; the history and characteristics of the defendant; the kinds of sentences available; the Sentencing Guidelines range; Sentencing Commission policy statements; the need to avoid unwarranted sentencing disparities; and the need to provide restitution to victims. *See* 18 U.S.C. § 3553(a). The Court must then determine a sentence that is “sufficient, but not greater than necessary,” to achieve the goals of Section 3553(a). *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc). These goals include the need to reflect the seriousness of the offense, promote respect for the law, and provide for just punishment; afford adequate deterrence to criminal conduct; protect the public from future crimes; and provide the defendant with needed training, medical care, or other correctional treatment in the most effective manner. *See* 18 U.S.C. § 3553(a)(2).

Although the Sentencing Guidelines are advisory, they remain the “starting point and initial benchmark” for sentencing. *United States v. Ellis*, 641 F.3d 411, 415 (9th Cir. 2011) (quoting *Kimbrough v. United States*, 552 U.S. 85, 108 (2007)). Here, the parties have agreed to a Total Offense Level of 31 based on the following U.S. Sentencing Guidelines provisions:

Base Offense Level, U.S.S.G. § 2G1.3(a)(2):	30
Use of Computer, U.S.S.G. § 2G1.3(b)(3)(B)	+ 2
Commission of a Sex Act or Sexual Contact, U.S.S.G. § 2G1.3(b)(4)(A)	+ 2
Acceptance of Responsibility, U.S.S.G. § 3E1.1:	- 3
Adjusted Offense Level:	31

(Plea Agreement ¶ 7.) The Probation Officer concurs in this calculation of the Total Offense Level. Given that defendant is in Criminal History Category III, the resulting guideline sentencing range is 135-168 months imprisonment. The parties and the Probation Officer, however, believe that a sentence of

1 121 months is a sufficient, but not greater than necessary, punishment considering the factors set forth in
2 § 3553(a).

3 Given the seriousness of the offense and the aggravating factors specific to this defendant, the
4 government believes that this sentence is necessary and appropriate under § 3553(a). Defendant's
5 admitted conduct — trafficking and exploiting a minor victim for his own monetary gain — warrants a
6 substantial sentence to achieve a just punishment under § 3553(a)(2)(A). Moreover, here, there is also
7 evidence showing defendant violently assaulted the minor victim on at least one occasion. (PSR ¶ 26.)
8 Additionally, defendant's cellphone contained numerous images of defendant with a firearm. (PSR
9 ¶ 27.) As the PSR correctly notes, firearms are often used by individuals engaged in trafficking minor
10 victims to instill fear in and intimidate the victims they traffic. (PSR ¶ 27.) Of particular importance is
11 the need to deter defendant from committing further human trafficking crimes, and to ensure the safety
12 of the community. A prison sentence of 121 months is also necessary for general deterrence, especially
13 given that defendant's conduct involved the trafficking and exploitation of a minor victim.

14 Nevertheless, the government recognizes that there are mitigating factors here that justify a
15 below-guidelines sentence of 121 months. As the PSR describes, defendant experienced significant
16 trauma in his childhood: he lacked a relationship with his biological father and was physically abused by
17 his step-father. (PSR ¶ 61.) Since defendant left home as a teenager, he has been homeless. (PSR
18 ¶ 59.) Moreover, although defendant is in Criminal History Category III, this calculation resulted from
19 just two convictions, one of which was a reckless driving conviction. (PSR ¶¶ 48-49.) The government
20 still believes defendant poses a significant danger to the community as his history of arrests and pending
21 murder charge demonstrate. (PSR ¶¶ 52-58.) However, a sentence of 121 months imprisonment is
22 sufficient here to fit the goals of § 3553(a).

23 In light of the above, a 20-year term of supervised release is also justified. This term of
24 supervised release is essential to protecting the safety of the community and ensuring that defendant
25 does not reoffend. This term of supervision also affords "the most effective manner" for providing
26 defendant correctional treatment. *See* 18 U.S.C. § 3553(a)(2)(D). While "imprisonment is not an
27 appropriate means of promoting correction and rehabilitation," 18 U.S.C. § 3582(a), the opposite is true
28

1 of supervised release. *See Tapia v. United States*, 131 S. Ct. 2382, 2390 (2011). In addition to the
2 typical rehabilitative benefits associated with supervision, the Probation Officer has recommended sex
3 offender treatment as part of defendant's supervision. Thus, a lengthy term of supervised release will
4 ensure that defendant continues to receive the kind of treatment that will help prevent recidivism. In
5 short, a 20-year term of supervision serves both defendant's interests and those of the community.

6 CONCLUSION

7 For the foregoing reasons, the government believes that a total sentence of 121 months
8 imprisonment, followed by a 20-year period of supervised release, and a \$100 special assessment is
9 sufficient, but not greater than necessary, to comply with the purposes of 18 U.S.C. § 3553(a).

10 DATED: November 14, 2018

Respectfully submitted,

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12 United States Attorney

13 /S/ Vanessa Baehr-Jones
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15 Assistant United States Attorney
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